

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANGEL ALVAREZ,

Plaintiff,

MEMORANDUM & ORDER

19-CV-6789 (EK) (TAM)

-against-

DETECTIVE ROBERT PETERS,

Defendant.

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ERIC KOMITEE, United States District Judge:

Plaintiff Angel Alvarez filed this *pro se* complaint on November 29, 2019. He brought Section 1983 claims against several police officials and a private citizen for false arrest, false imprisonment, malicious abuse of process, and malicious prosecution arising from his June 4, 2015 arrest for petit larceny. The only claim remaining is the malicious prosecution claim against now-retired Detective Robert Peters – the NYPD officer who signed a sworn statement attesting to Plaintiff's role in the offense. Compl. 10-11, ECF No. 1.¹ Defendant now

¹ Specifically, I dismissed Plaintiff's claims as to all but one defendant – Detective Robert Peters – and dismissed Plaintiff's claim for malicious abuse of process. See Mem. & Order 13-15, ECF No. 4. Of the remaining three claims, I allowed one, the malicious-prosecution claim, to proceed against defendant Detective Peters. I granted Plaintiff sixty days to show cause why two other claims – for false arrest and false imprisonment – should not be dismissed as time-barred. Plaintiff did not respond to the Court's Order with respect to those two claims. Accordingly, on July 1, 2020, I dismissed those claims for failure to state a claim on which relief may be granted. See Mem. & Order 2, ECF No. 11.

moves for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For the reasons set out below, the motion is granted.

I. Background

These facts are taken from the Complaint and Defendant's 56.1 Statement where supported by uncontroverted evidence in the record.

On April 3, 2015, Alvarez was remanded to the custody of the New York City Department of Correction ("DOC") pending trial on a burglary charge. See Def. 56.1 Statement ¶¶ 1-2, ECF No. 31. On June 4, 2015, Alvarez was removed from DOC custody by Defendant Detective Robert Peters, brought to NYPD Precinct 109, and arrested for a January 2014 theft of an iPhone 5S from Jetta Trading Inc., in violation of N.Y. Penal Law § 155.25 (petit larceny). See Def. 56.1 Statement ¶¶ 3-4. Detective Peters also arrested Alvarez on a burglary charge pertaining to an unrelated incident; he was arraigned in Queens County Criminal Court in both cases that same day. *Id.* ¶¶ 7-8.

Following his arrest and arraignment, Plaintiff was unable to make bail and remained incarcerated, awaiting trial on his now-three pending criminal charges. *Id.* ¶ 9; Compl. 5. On December 14, 2016, the petit larceny charge was dismissed on speedy trial grounds pursuant to N.Y. Crim. Proc. Law § 30.30.

Id. ¶ 10. Alvarez remained in custody awaiting trial on his two remaining criminal charges. See Def. 56.1 Statement ¶ 11.

A year later, on October 18, 2017, Alvarez pleaded guilty to two counts of burglary in the third degree, for which he was sentenced to a term of two-to-five years' incarceration.

Id. ¶¶ 12-13.

On November 29, 2019, Alvarez filed a Section 1983 suit against Detective Peters, Hengyi Chen (the employee who identified Alvarez as the burglar of the iPhone), the NYPD, and the leadership of the NYPD, asserting a multitude of claims. In April 2020, as noted above, the Court granted Alvarez's request to proceed *in forma pauperis* and dismissed a number of defendants and claims.

The only remaining claim is against defendant Peters for malicious prosecution. The City asked for a pre-motion conference in anticipation of a motion to dismiss, and at that conference the Court contemplated – and later issued an order – converting the motion to dismiss into one for summary judgment. The Court also confined the motion to two issues: (1) whether the June 4, 2015 prosecution implicated Plaintiff's liberty interests under the Fourth Amendment and (2) whether the dismissal of the June 4, 2015 charge on speedy-trial grounds constituted a "favorable termination" for purposes of a claim for malicious prosecution under *Lanning v. City of Glens Falls*,

908 F.3d 19, 28 (2d Cir. 2018). The Court gave Alvarez clear instructions on which issues to brief and how he could, if he chose, request evidence from Defendant via expedited discovery.

See Order of May 14, 2021, at 5-6, ECF No. 25.

Alvarez never responded to Peters's motion for summary judgment – even after the Court *sua sponte* gave him additional time – so the Court deemed the motion fully briefed on October 21, 2021. Alvarez also declined to attend oral argument, despite receiving notice; the Court elected to forego argument and decide this motion on the papers.

II. Legal Standard

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact” and that he “is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material fact is one that “can affect the outcome under the applicable substantive law.” *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996). A genuine dispute is one that can “reasonably be resolved in favor of either party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). In performing this analysis, the Court must resolve all ambiguities and draw all inferences in favor of the non-moving party. *Gallo v. Prudential Residential Servs., Ltd. P'ship*, 22 F.3d 1219, 1223 (2d Cir. 1994). “If, in this generous light, a material issue is found to exist, summary judgment is improper.”

Nationwide Life Ins. Co. v. Bankers Leasing Ass'n, 182 F.3d 157, 160 (2d Cir. 1999).²

The moving party may establish that there is no genuine dispute "by showing that little or no evidence may be found in support of the nonmoving party's case." *Gallo*, 22 F.3d at 1223-24 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). If the moving party meets this burden, the non-moving party "must come forward with specific facts showing that there is a genuine issue for trial." *LaBounty v. Coughlin*, 137 F.3d 68, 73 (2d Cir. 1998). However, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts and may not rely on conclusory allegations or unsubstantiated speculation." *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011). If "no rational finder of fact could find in favor of the nonmoving party because the evidence to support its case is so slight, summary judgment must be granted." *Id.*

III. Discussion

The Second Circuit instructs that courts must give "special solicitude" to pro se litigants and should construe "the submissions of a pro se litigant liberally" and interpret them "to raise the strongest arguments that they suggest."

² Unless otherwise noted, when quoting judicial decisions this order omits all alterations, citations, footnotes, and internal quotation marks.

Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam). “Nonetheless, proceeding pro se does not otherwise relieve a litigant of the usual requirements of summary judgment, and a pro se party’s bald assertions unsupported by evidence . . . are insufficient to overcome a motion for summary judgment.” *Houston v. Teamsters Local 210, Affiliated Health & Ins. Fund*, 27 F. Supp. 3d 346, 351 (E.D.N.Y. 2014).

“[F]ailure to oppose a motion for summary judgment alone does not justify the granting of summary judgment.” *Vt. Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004). The Court “may not grant the motion without first examining the moving party’s submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial.” *Id.* The Court also may not rely solely on the statement of undisputed facts contained in the moving party’s Rule 56.1 statement; instead, “[i]t must be satisfied that the citation to evidence in the record supports the assertion.” *Id.*

Alvarez received notice of the potential consequences arising from the filing of a motion for summary judgment on multiple occasions. See *Cruz v. Armstrong*, 20 Fed. App’x 95, 96 (2d Cir. 2001) (“A pro se litigant facing a motion for summary judgment must receive notice of the requirements for opposing

the motion."); Local Rule of the United States District Courts for the Southern and Eastern Districts of New York 56.2 (setting out movant's responsibility to provide notice to pro se litigant when moving for summary judgment). At the premotion conference on April 20, 2021, the Court observed that it was contemplating converting Peters's motion to dismiss to a motion for summary judgment. See Transcript of Proceedings held on April 20, 2021, at 15, ECF No. 26. And in a subsequent order, the Court laid out the limited questions the parties were to address at summary judgment. See Order of May 14, 2021, at 4-5, ECF No. 25. In addition, defendant Peters filed the statement called for by Local Civil Rule 56.2. See Local Rule 56.2; see also ECF No. 34.

To succeed on a claim for malicious prosecution under Section 1983, a plaintiff must establish the basic elements of malicious prosecution under New York law: "(i) the commencement or continuation of a criminal proceeding against her; (ii) the termination of the proceeding in her favor; (iii) that there was no probable cause for the proceeding; and (iv) that the proceeding was instituted with malice." *Mitchell v. City of New York*, 841 F.3d 72, 79 (2d Cir. 2016).

In addition, a Section 1983 malicious-prosecution claim also requires "a seizure or other perversion of proper legal procedures implicating the claimant's personal liberty and

privacy interests under the Fourth Amendment.” *Id.* This is because Section 1983 offers a mechanism for enforcing only federal rights that are “elsewhere conferred” – that is, rights that derive from either a federal statute or the U.S. Constitution. *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). As with malicious-prosecution claims generally, the federal right at issue here derives from the Fourth Amendment. See *Albright v. Oliver*, 510 U.S. 266, 274-75 (1994) (plaintiffs cannot bring Section 1983 claims for malicious prosecution under substantive due process theories); *Singer v. Fulton Cnty. Sheriff*, 63 F.3d 110, 116 (2d Cir. 1995) (“A plaintiff asserting a Fourth Amendment malicious prosecution claim under § 1983 must . . . show some deprivation of liberty consistent with the concept of ‘seizure.’”). Successful plaintiffs, therefore, must show that the malicious prosecution “implicate[s]” the plaintiff’s right to be “free of unreasonable or unwarranted restraints on personal liberty” under the Fourth Amendment. *Washington v. County of Rockland*, 373 F.3d 310, 316 (2d Cir. 2004).

A. Deprivation of Liberty

The prosecution for the June 4, 2015 petit-larceny charge did not implicate Plaintiff’s Fourth Amendment rights. Plaintiff was already incarcerated on other charges when the offense occurred, and he remained incarcerated after the petit-

larceny charge was dismissed. See Def. 56.1 Statement ¶¶ 2-3, 9-11; Def. Ex. B to Decl. of Mostafa Khairy in Supp. of Def.'s Mot. for Summ. J., New York Department of Correction's Inmate Movement History Log, ECF No. 33-2. Plaintiff does not dispute that fact. See PMC Transcript 10-12, ECF No. 26 (In response to the Court asking whether Plaintiff disputed whether he was incarcerated both before and after he was arrested on the petit larceny charge that is the basis for this § 1983 suit, Plaintiff replied: "Oh, no, your Honor, I'm not going to dispute that I was not incarcerated because I was, you know."). When asked to confirm that he was incarcerated awaiting trial on different charges, Plaintiff again confirmed that was the case:

THE COURT: But is it true that you were already -- that you were doing that time in jail regardless of this case, because you were also incarcerated on a different charge?

MR. ALVAREZ: Yeah, I'm not disputing that. I'm not disputing that, your Honor.

Id. 11:19-24.

"Courts have held, for purposes of a malicious prosecution claim, that an inmate already incarcerated has not suffered any unconstitutional deprivation of liberty as a result of being charged with new criminal offenses." *Allen v. City of New York*, 480 F. Supp. 2d 689, 717 (S.D.N.Y. 2007); see also *Arnold v. Geary*, 582 Fed. App'x 42, 42-43 (2d Cir. 2014); *Walker v. Sankhi*, 494 F. App'x 140, 143 (2d Cir. 2012) (holding that

the plaintiff "could not have suffered a deprivation of liberty" as a result of the charge "because, throughout the pendency of that charge, he was already in custody, and remained in custody, for a completely separate . . . charge, of which he was ultimately convicted"). Accordingly, Peters is entitled to summary judgment on Plaintiff's Section 1983 claim.

Plaintiff does not explicitly assert a malicious prosecution claim under New York state law. See Compl. 1 (submitting, as Plaintiff's complaint, a court-issued form labeled "Section 1983 claim"). To the extent Alvarez's complaint can be read to allege a state-law claim for malicious prosecution, the Court declines to exercise supplemental jurisdiction over that claim. Under 28 U.S.C. § 1337(c)(3), "district courts may decline to exercise supplemental jurisdiction over a claim" once they dismiss all claims over which they have original jurisdiction. *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 305 (2d Cir. 2003).³

³ While Peters is entitled to summary judgment because Alvarez cannot show a deprivation of liberty, I also asked the parties to brief the issue of whether dismissal of the charge against Alvarez on speedy-trial grounds constituted a favorable termination, one element of a malicious prosecution claim. During the pendency of this case, the Second Circuit answered the question in the affirmative, holding that "a plaintiff will prevail on this 'favorable termination' element as a matter of law when there was a speedy trial dismissal unless the defendant produces evidence of a 'non-merits-based explanation for the failure to pursue the prosecution' of the plaintiff. See *Kee v. City of New York*, 12 F.4th 150, 165 (2d Cir. 2021) (quoting *Murphy v. Lynn*, 118 F.3d 938, 951 (2d Cir. 1997)).

IV. Conclusion

For the reasons explained above, Peters's motion for summary judgment is granted. The Clerk of Court is respectfully instructed to enter judgment and close this case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: January 28, 2022
Brooklyn, New York